Tan Kim Beng & Ors v Datuk Yen Ying Pang @ Kenneth Yen Yin Pin & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO S-02–123 OF 2010
LOW HOP BING, ABDUL WAHAB PATAIL AND AZAHAR MOHAMED JJCA
27 DECEMBER 2012

Civil Procedure — Appeal — Notice of appeal — Preliminary objection — Memorandum of appeal — Non-compliance of — Failure to specify error of fact or of law — Whether non-compliance occasioned substantial miscarriage of justice — Whether respondents objection purely upon technicality — Rules of the Court of Appeal 1994 r 18(1)

Civil Procedure — Summary judgment — Determination of question of law or construction of document — Trial judge proceeded under O 14A of the Rules of the High Court 1980 hearing without an application from parties — Whether requirements under O 14A r 1(3) mandatory — Whether court ought not to have determined any question under the order unless parties given opportunity of being heard — Whether order made by trial judge ought to be set aside — Rules of the High Court 1980 O 14A r 1(2) & (3)

Civil Procedure — Undertaking — Damages for obtaining injunction — Discharge of undertaking — Whether valid reasons established — Whether circumstances justified discharging undertaking — Whether undertaking ought to be affirmed

The appeal herein was against the validity of the 2002 election for a two year term. The appellants herein, The Incumbent Honorary Secretary General of Sabah United Chinese Chambers of Commerce ('SUCCC') who was suing on behalf of SUCCC and seven others (the plaintiffs), had applied to enter summary judgment under O 14 of the Rules of the High Court 1980 ('RHC'). Their application was dismissed by the High Court. However, based upon the same O 14 of the RHC application, the High Court on its own motion proceeded under O 14A of the RHC. At the same time, the High Court had allowed the respondents' counterclaim. The appellants appealed against the decision of the High Court alleging, inter alia, abuse of the process of the court when the impugned injunction was discharged purportedly on the basis of the acceptance of the alleged false or forged documents. Further, the fifth respondent raised a preliminary objection under r 18(1) of the Rules of the

Court of Appeal 1994 ('ROC') on the ground that the 34 grounds set out in the memorandum of appeal failed to specify the error of fact or of law. The chairman of the panel of this court, after hearing submissions of the parties, dismissed the appeal against the validity of the 2002 election. The decision of the High Court by Justice Clement Skinner in discharging the impugned injunction was dismissed as there was no abuse of the process of the court. Furthermore, there was a pending inter parties interlocutory injunction. This means the committee of office bearers continue as caretaker committee until the discharge of the injunction after the full trial. Notwithstanding the said decision of this court, the parties had sought change to the said order. It was contended that because there was no caretaker clause in the constitution of the umbrella body SUCCC, there was a state of flux. In respect of calling for an extraordinary delegates conference ('EDC'), it was contended by two factions, as to whom the president of SUCCC was. The EDC could not be called because the constitution provided that a president was needed to call for an EDC election. Further, the issue remained as to the damages for the injunction that had been discharged when full trial took place. There was an undertaking given. Counsel sought to avoid the obligation and urged this court to exercise its discretion to set aside the undertaking.

Held, setting aside decision of the High Court and dismissing the counterclaim:

(1) The respondents' argument was inherently flawed in this case since O 14A r 1(3) provided in mandatory terms that the court shall not determine any question under the order unless the parties have had an opportunity of being heard on the question. The dismissal of the appellants/plaintiffs' writ under O 14A r 1(2) was contrary to O 14A r 1(3) and ought to be set aside (see para 4).

(2) It was not in the fifth respondent's submission that he was unable to understand the point raised and therefore unable to answer it, thereby occasioning an injustice to the respondent. The objection was purely upon a technicality, and not because such non-compliance occasioned a substantial miscarriage of justice to the respondent as required by r 1A of the ROC. The Rules are intended as the means to justice and not to be put ahead of it. The Rules are to be prevailed upon and applied solely to advance the cause of justice and to prevent miscarriage of justice, and not to be used merely as accessories in a martial arts dance. It wastes valuable time and defeats the primary purpose of a fair and just resolution of the matter between the parties (see paras 13–14).

(3) An EDC to the SUCCC was to be called within two months to elect new office bearers. Following the agreement of the parties, the following consequential order was made namely, that Datuk Yen Ying Pang shall be the Chairman of the EDC. Further, pursuant to the consent of the

parties, para 20 of the order was amended to provide that the voting shall be by way of open ballot at the absolute discretion of the voter (delegate) (see paras 20–22).

(4) In this courts view, it was an undertaking given to obtain an injunction that they had the benefit of but exhausted it when trial was held. Having benefited from the advantage obtained, there was no good reason to seek to not be bound by the undertaking. The reason given, to avoid it becoming a spanner in the works to moving forward was patently hollow, for it was the giver of the undertaking who said it could become a spanner in the works. A facility with words may dress up an argument, but a hollow argument remains hollow and does no credit. For the removal of doubt, the chairman of the panel ordered that it be recorded that the undertaking as to damages was affirmed (see para 24).

[Bahasa Malaysia summary

Rayuan ini adalah terhadap kesahan pemilihan 2002 untuk tempoh dua tahun. Perayu-perayu, Penyandang Ketua Setiausaha Kehormat Sabah United Chinese Chambers of Commerce ('SUCCC') yang mengambil tindakan bagi pihak SUCCC dan tujuh yang lain ('plaintif-plaintif'), memohon untuk memasukkan penghakiman terus di bawah A 14 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'). Permohonan mereka telah ditolak oleh Mahkamah Tinggi. Walau bagaimanapun, berdasarkan permohonan A 14 KMT yang sama, Mahkamah Tinggi berdasarkan usulnya bertindak di bawah A 14A KMT. Pada masa yang sama, Mahkamah Tinggi telah membenarkan tuntutan balas responden-responden. Perayu-perayu merayu terhadap keputusan Mahkamah Tinggi dan menghujahkan, antara lain, penyalahgunaan proses mahkamah apabila injunksi yang dipertikaikan telah dilepaskan berdasarkan penerimaan dokumen-dokumen yang didakwa dipalsukan. Seterusnya, responden kelima menimbulkan bantahan awalan di bawah k 18(1) Kaedah-Kaedah Mahkamah Rayuan 1994 ('KMR') atas alasan bahawa 34 alasan yang dinyatakan dalam memorandum rayuan tersebut gagal untuk menyatakan kesilapan fakta atau undang-undang. Pengerusi panel mahkamah ini, selepas mendengar hujahan pihak-pihak, telah menolak rayuan terhadap kesahan pemilihan 2002 tersebut. Keputusan Mahkamah Tinggi oleh Hakim Clement Skinner dalam melepaskan injunksi yang dipertikaikan telah ditolak kerana tidak berlaku penyalahgunaan proses mahkamah. Tambahan lagi, terdapat injunksi interlokutori antara pihak-pihak yang masih belum selesai. Ini bermaksud jawatankuasa pemegang-pemegang jawatan meneruskan sebagai jawatankuasa sementara sehingga pelepasan injunksi tersebut selepas perbicaraan penuh. Tanpa mengira keputusan oleh mahkamah ini, pihak-pihak telah memohon bagi pindaan terhadap perintah tersebut. Dihujahkan bahawa oleh kerana tiada fasal *caretaker* di bawah payung perlembagaan organisasi SUCCC, terdapat kesamaran keadaan. Berkenaan dengan persidangan perwakilan luar biasa ('EDC'), ia telah dihujah oleh dua

kumpulan, mengenai siapakah presiden SUCCC tersebut. EDC tidak dapat dipanggil kerana perlembagaan menyatakan bahawa seorang presiden diperlukan untuk memanggil pemilihan EDC. Selain itu, isu tersebut kekal sebagai kerugian bagi injunksi yang telah dilepaskan apabila perbicaraan penuh telah dijalankan. Terdapat satu akujanji diberikan. Peguam memohon untuk mengelak obligasi tersebut dan menggesa mahkamah ini untuk menggunakan budi bicaranya bagi mengetepikan akujanji tersebut.

Diputuskan, mengetepikan keputusan Mahkamah Tinggi dan menolak tuntutan balas:

(1) Hujahan responden-responden sememangnya cacat dalam kes ini kerana A 14A k 1(3) memperuntukkan dari segi mandatori bahawa mahkamah tidak akan menentukan apa-apa persoalan di bawah perintah tersebut melainkan jika pihak-pihak telah mendapat peluang untuk didengari mengenai persoalan tersebut. Penolakan writ perayu-perayu/plaintif-plaintif di bawah A 14A k 1(2) adalah bertentangan dengan A 14A k 1(3) dan seharusnya diketepikan (lihat perenggan 4).

(2) Tidak terdapat dalam penghujahan responden kelima bahawa dia tidak dapat memahami isu yang dibangkitkan dan oleh itu tidak dapat menjawabnya, dengan demikian menyebabkan ketidakadilan terhadap responden. Bantahan tersebut adalah semata-mata atas perkara teknikal, dan bukan kerana ketidakpatuhan seperti yang telah menyebabkan ketidakadilan yang besar terhadap responden seperti yang dikehendaki oleh k 1A KMR. Kaedah-Kaedah tersebut adalah bertujuan sebagai langkah demi keadilan dan bukan keutamaan. Kaedah-Kaedah tersebut adalah lebih utama dan digunakan semata-mata untuk mengemukakan tujuan keadilan dan mencegah ketidakadilan, dan tidak boleh digunakan sekadar sebagai aksesori dalam pertahanan diri. Ini membazirkan masa yang berharga dan mensia-siakan tujuan utama penyelesaian yang adil dan saksama berkenaan perkara tersebut antara pihak-pihak (lihat perenggan 13–14).

(3) Satu EDC daripada SUCCC akan dipanggil dalam tempoh dua bulan untuk melantik pemegang-pemegang jawatan yang baru. Berikutan perjanjian pihak-pihak, perintah berikutnya telah dibuat iaitu, bahawa Datuk Yen Ying Pang akan menjadi pengerusi EDC. Selanjutnya, menurut persetujuan pihak-pihak, perenggan 20 daripada perintah tersebut telah dipinda untuk memperuntukkan bahawa pengundian akan dibuat melalui cara undi terbuka mengikut budi bicara mutlak pengundi (perwakilan) (lihat perenggan 20–22).

(4) Pada pandangan mahkamah ini, ia adalah satu aku janji yang diberikan untuk memperoleh injunksi yang mana mereka mendapat manfaat daripadanya tetapi telah menggunakannya sepenuhnya apabila

perbicaraan dijalankan. Setelah mendapat manfaat daripada kelebihan yang diperolehi, tidak ada alasan yang baik untuk dicari agar tidak terikat dengan akujanji tersebut. Alasan yang diberikan, untuk mengelakkannya menjadi penghalang untuk maju ke hadapan ternyata tiada, kerana pemberi akujanji yang mengemukakan alasan tersebut boleh menjadi penghalang. Kemudahan dengan kata-kata boleh menguatkan hujah, tetapi hujah yang kosong kekal kosong dan tidak mempunyai kredit. Bagi menghilangkan keraguan, pengerusi panel telah mengarahkan supaya direkodkan bahawa akujanji terhadap kerugian disahkan (lihat perenggan 24).]

Notes

For a case on notice of appeal, see 2(1) *Mallal's Digest* (4th Ed, 2012 Reissue) para 1571.

For cases on determination of question of law or construction of document, see 2(4) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 8657–8659.

Cases referred to

Chua Choong Yin v Tan Boon Bak Trading Sdn Bhd & Anor [2002] 4 MLJ 145; [2002] 3 CLJ 357, CA (refd)

Chua Tim Lan v RHB Bank Bhd & Anor [2008] 6 CLJ 500, CA (refd)

Duli Yang Amat Mulia Tunku Ibrahim Ibni Sultan Iskandar Al-Haj Tunku Mahkota Johor v Datuk Captain Hamzah bin Mohd Noor and another appeal [2009] 4 MLJ 149; [2009] 4 CLJ 329, FC (refd)

Jaafar bin Ibrahim v Gan Kim Kin [1985] 2 MLJ 24; [1985] 2 MLJ 24, SC (refd)

Low Cheng Soon v TA Securities Sdn Bhd [2003] 1 MLJ 389; [2003] 1 CLJ 309, CA (refd)

Sateras Resources (M) Bhd, Re [2006] 3 MLJ 140; [2006] 2 CLJ 489, CA (refd)

Legislation referred to

Rules of the Court of Appeal 1994 rr 1A, 18(1)

Rules of the High Court 1980 O 1A, O 14, O 14A r 1(2), (3)

Appeal from: Civil Suit No K 22–165 of 2002 (High Court, Kota Kinabalu)

Alex Siu (Lawrence Thien with him) (Chau & Thien) for the first, second, fourth, fifth, sixth, seventh and eighth appellants.

Suwen Chin (Shireen Sikayun with her) (Lee & Thong) for the first, second, third, fourth, sixth, ninth and tenth respondents.

Ir Au Bah (Ir Au & Co) for the fifth respondent.

Hassan bin Murtaza (Shelley Yap) for the seventh and eighth respondents.

Abdul Wahab Patail JCA:

[1] The appellants herein Tan Kim Beng, the Incumbent Honorary Secretary

General of Sabah United Chinese Chambers of Commerce ('SUCCC') suing on behalf of SUCCC and seven others ('the plaintiffs'), had applied under O 14 of the RHC 1980 to enter summary judgment. Having heard submissions thereon, the High Court dismissed the application. However, based upon the same O 14 of the RHC application, the High Court proceeded under O 14A of the RHC.

[2] Order 14A of the RHC provides:

> Rule 1 Determination of questions of law or construction. (O.14A, r. 1).
>
> (1) The Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that —
>
> (a) such question is suitable for determination without the full trial of the action; and
>
> (b) such determination will finally determine the entire cause or matter or any claim or issue therein.
>
> (2) Upon such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just.
>
> (3) The Court shall not determine any question under this Order unless the parties have had an opportunity of being heard on the question.
>
> (4) The jurisdiction of the Court under this Order may be exercised by a Registrar.
>
> (5) Nothing in this Order shall limit the powers of the Court under Order 18, rule 19, or any other provision of these rules.
>
> Rule 2. Manner in which applications under rule 1 may be made. (O.14A, r. 2).
>
> An application under rule 1 may be made by summons or motion or (notwithstanding Order 32, rule 1) may be made orally in the course of any interlocutory application to the Court.

[3] It is not disputed that neither party had made an application under O 14A. Hence, the respondents relied entirely upon O 14A r 1 that the court may of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the court that such question is suitable for determination without the full trial of the action and such determination will finally determine the entire cause or matter or any claim or issue therein.

[4] We hold that the argument is inherently flawed in this case since O 14A

r 1(3) provides in mandatory terms that the court shall not determine any question under the order unless the parties have had an opportunity of being heard on the question. The dismissal of the plaintiffs' writ under O 14A r 1(2) was contrary to O 14A r 1(3) and ought to be set aside.

[5] Having heard that, the respondents concede that the appeal should in the circumstances be allowed, this court recorded a consent order as follows:

> By consent the appeal is allowed. The court orders no costs here and below. The order of the High Court under O 14A is set aside, and is substituted with an order that the plaintiff's action be set down for early trial in the High Court. Deposit refunded to the appellant.

THE APPEAL AGAINST COUNTERCLAIM

[6] At the same time the High Court allowed the counterclaim by the respondents' herein, Datuk Yen Ying Pang @ Kenneth Yen Yin Pin and nine others. The appellants appealed against that order also. The third appellant has since withdrawn his appeal. There was a cross-appeal by the respondents. The cross-appeal was withdrawn at the hearing of the appeal before us.

[7] In this part of the appeal, the appellants are represented by Alex Siu and Lawrence Thien. The first to fourth, sixth and nineth to tenth respondents are represented by Suwen Chin and Ms Sireen Sikayun. The fiftth respondent is represented by Ir Au Bah, while the seventh and eighth respondents are represented by Hassan bin Mutaza.

[8] Ir Au Bah for the fifth respondent raised a preliminary objection under r 18(1) of the Rules of the Court of Appeal 1994 which provides:

> (1) The appellant shall prepare a memorandum of appeal setting forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, and specifying the points of law or fact which are alleged to have been wrongly decided; such grounds to be numbered consecutively.

[9] The objection was made on the ground that the 34 grounds set out in the memorandum of appeal failed to specify the error of fact or of law, and ground 35 is a prayer.

[10] Three or four examples would serve the present purpose:

(1) The learned High Court Judge erred in ruling that the election, for the 2002 to 2004 term, of the respondents to the offices of the Executive Committee of the Sabah United Chinese Chambers of Commerce, the umbrella organization of the 16 Chinese chambers of commerce in Sabah

(the 'SUCCC') on June 29, 2002 at its 38th Annual Delegates Conference ('38th ADC') at the Tun Mustapha Hall at Kudat, by way of unopposed nominations after delegates from 8 of the 16 member-chambers and 1 of the 3 election scrutineers had left the venue, was valid and proper.

(3) The learned Judge erred in disregarding the evidence adduced and in failing to hold, that the respondents were conspiring to subvert the election and the SUCCC Constitution.

(16) The learned Judge erred in effectively holding that the panel of scrutineers had the authority to overrule the wishes or decision of the individual member chambers as to how such member-chamber should cast its vote.

(35) In the premises, the appellants pray that this appeal be allowed, with costs in this Court and in the Court below, and that the appellants' claim in the Original Action for, inter alia, a declaration that the election is invalid and for an order for a fresh election to be held, be allowed and that the respondents' counterclaim in the Original Action and in the Actions By Counterclaim be dismissed.

[11] Various cases were referred to. Unlike in *Jaafar bin Ibrahim v Gan Kim Kin* [1985] 2 MLJ 24; [1985] 2 MLJ 24 (SC), the objection here is not upon a statement of claim which requires clarity, but upon a memorandum of appeal. In *Chua Choong Yin v Tan Boon Bak Trading Sdn Bhd & Anor* [2002] 4 MLJ 145; [2002] 3 CLJ 357 (CA), certain exhibit were not included in the record of appeal. In *Low Cheng Soon v TA Securities Sdn Bhd* [2003] 1 MLJ 389; [2003] 1 CLJ 309 (CA), of 85 exhibits only six were included in the record of appeal. That they were relevant to the appellants' appeal was no answer. *Re Sateras Resources (M) Bhd* [2006] 3 MLJ 140; [2006] 2 CLJ 489 (CA), the notice of appeal described Sateras as petitioner and no respondent to the appeal was cited, while the record of appeal made no mention at all of any respondent and contained only the order appealed against in its draft form. *Chua Tim Lan v RHB Bank Bhd & Anor* [2008] 6 CLJ 500 (CA) was an instance where the record was so defective it was tantamount to no record. *Duli Yang Amat Mulia Tunku Ibrahim Ibni Sultan Iskandar Al-Haj Tunku Mahkota Johor v Datuk Captain Hamzah bin Mohd Noor and another appeal* [2009] 4 MLJ 149; [2009] 4 CLJ 329 (FC) did not concern r 18 but O 1A of the Rules of the High Court. Even so, the example given in that case is of no assistance to the preliminary objection:

> [50] As I had mentioned in court, if O 1A is sought to be invoked whenever a party fails to comply with any provision of the rules, then the whole of the Rules of the High Court 1980 would be rendered useless. For example, can failure to enter appearance or file defence within the specified period be considered as an irregularity? Of course it cannot be. A party who is late in filing the relevant papers must obtain an order from the court to extend the time, if such extension is required and is permitted by the Rules. Therefore, the answer to question two is in the negative.

[12] We agree it would be more helpful to the court, reading it objectively and not in the position of knowledge as one of the parties, to understand the ground being advanced more clearly. But, that is not the point. If an appellant does not make his point clearly, it is unlikely to succeed. It is his choice. That is not reason for the respondent to object.

[13] We note that the objection is that of non-compliance with r 18(1) in not specifying the error of law or of fact. It is not in the respondent's submission that the respondent was unable to understand the point raised and therefore unable to answer it, thereby occasioning an injustice to the respondent. We conclude, therefore, that the objection is purely upon a technicality, and not because such non-compliance occasions a substantial miscarriage of justice to the respondent as required by r 1A of the Rules of the Court of Appeal which provides:

> A Court or Judge shall not allow any preliminary objection by any party only on the ground of non-compliance of any of these Rules unless the Court or Judge is of the opinion that such non-compliance has occasioned a substantial miscarriage of justice.

[14] In simpler language, the Rules are intended as the means to justice and not to be put ahead of it. We stress that the Rules are to be prevailed upon and applied solely to advance the cause of justice and to prevent miscarriage of justice, and not to be used merely as accessories in a martial arts dance. It wastes valuable time and defeats the primary purpose of a fair and just resolution of the matter between the parties.

[15] We find no difficulty in the circumstances in dismissing the preliminary objection.

[16] We return to the appeal against the counterclaim allowed by the High Court.

[17] After hearing submissions of the parties, the chairman of the panel of this court read out the judgment ex tempore:

> This is our full ex tempore judgment. The appeal against the validity of the 2002 election for a two year term is now rendered academic and is therefore dismissed. In respect of the cross appeal counterclaim against the decision of the High Court pertaining to conspiracy in the abuse of the process of the court purportedly on the basis of allegedly false or forged documents there was apparently nothing in the order of Mr Justice Sulong Matjeraie to suggest that he had been misled thereby. The question before us is, on the submission before us and the appeal records was there any abuse of the process of the court when the impugned injunction was discharged after a full trial by Mr Justice Clement Skinner. The fact is that there was a pending

> inter partes interlocutory injunction. This means the committee of office bearers continue as caretaker committee until the discharge of the injunction after the full trial. We are therefore of the view that in the circumstances prevailing in the cross appeal there has been no abuse of the process of the court. In this regard the cross appeal is allowed. The High Court decision given by Mr Justice Skinner is set aside and substituted with an order that the counterclaim under this head of conspiracy in the abuse of the process of the court is dismissed. As the positions of the parties before us are … we order that the parties are to bear their own costs respectively here and in the court below. Deposit to be refunded to the respective appellants.

[18] There was a correction where it was agreed that where the expression 'cross-appeal' appears, it was substituted with 'counterclaim'.

[19] Notwithstanding decision having been made by the court, counsel spoke on a further change. It was argued that because there was no caretaker clause in the constitution of the umbrella body SUCCC, there is a state of flux. It was further argued that in respect of calling for an extraordinary delegates conference ('EDC') to resolve the matter, how could an EDC be called when the constitution says a president is needed to call for an EDC for election to be called, and in this instance, who is president is disputed by the two factions in the SUCCC.

[20] The chairman explained the remedy is to go back to the delegates and let the delegates to the SUCCC decide. He proposed a consequential order that an EDC of delegates to the SUCCC be called within two months. A discussion ensued, including calling the parties themselves before the court where the chairman of the panel spoke to them in their own language (Mandarin). They agreed that an EDC be held to resolve the matter so the SUCCC can move on. The following consequential order was made by discussion and with the agreement of the parties:

> There shall be extraordinary delegates conference and notice be issued for the conference and to elect new office bearers to be held on the 9th of April 2012, a Monday at 10.00am in a neutral place the Promenade Hotel. That Datuk Yen Ying Pang shall be the chairman of the EDC.

[21] There followed discussion whether the balloting should be secret or open. It was clear to us that the objection was immaterial to the EDC of the SUCCC, but a question of the delegate chosen by the appointing member chamber elected as directed by his chamber. It was a case of counsel for one faction arguing for an open ballot, while counsel for the other was happy with a secret ballot, and offering suggestion for a compromise.

[22] It was suggested not to specify whether open or secret ballot, but leave

A it to individual members. Same counsel then raised that delegates should not be pressured. Arising from this, all parties agreed to an order to be added to the order at para 20 above that voting shall be by way of open ballot at the absolute discretion of the voter (delegate).

B **[23]** An issue remained as to the damages for the injunction that had been discharged when full trial took place. There was an undertaking given. Counsel sought to avoid the obligation and submitted that the court exercises its discretion to set aside the undertaking so that it does not become a spanner in the works.

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[24] In our view, it was an undertaking given to obtain an injunction that they had the benefit of and exhausted when trial was held. Having benefited from the advantage obtained, there is no good reason to seek to not be bound by the undertaking. The reason given, to avoid it becoming a spanner in the works to moving forward is patently hollow, for it is the giver of the undertaking who says it could become a spanner in the works. A facility with words may dress up an argument, but a hollow argument remains hollow and does no credit. For the removal of doubt, the chairman of the panel ordered that it be recorded that the undertaking as to damages is affirmed.

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Decision of the High Court set aside and counterclaim dismissed.

Reported by Ashgar Ali Ali Mohamed

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